IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.43500 M OF 2005

DATE OF DECISION: MAY 16, 2007

Rajbala @ Rajesh

.....Petitioner

VERSUS

Shiv Kumar

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. P. S. Khurana, Advocate,
for the petitioner.

Mr. N. S. Shekhawat, Advocate,
for the respondent.

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RANJIT SINGH, J.

Rajbala, an unfortunate widow of Dinesh Kumar, is not being allowed to rest in peace even after the death of her husband by her in-laws.

The petitioner married Dinesh Kumar on 17.4.1998. Her husband was selected as Patwari. He, however, died on 5.4.2000, leaving the petitioner to face the world which include her in-laws also. Dispute arose between the petitioner and her in-laws for claiming the service benefit of Dinesh Kumar. Petition under Section 372 of the Indian Succession Act was filed by mother-in-law of the petitioner to claim property of her son, the husband of the petitioner. Having failed to get relief by this mode, the respondent in-laws of the petitioner

has filed this complaint against the petitioner, which according to her is false and frivolous. The petitioner claims that this is with a motive to dis-inherit and dis-entitle the petitioner for claiming the benefits, which may otherwise come to her after the death of her husband. Allegation made in the complaint is that the petitioner was pregnant at the time of death of her husband and has aborted the child and, thus, guilty of offences under Sections 315, 318, 120-B IPC. Judicial Magistrate Ist Class, Mahendergarh, more concerned with normal rut of routine processes, summoned the petitioner unmindful of the effect that the proceedings could have, on her life and on her efforts to look for fresh start. After all, she has to live her life and can not be expected to mourn throughout her life for some one who is never to return. Magistrate apparently has not given any thought that the parents of the deceased are more concerned about inheriting the benefits becoming due on account of death of the deceased and less about the life of the lady who had also lost a husband. Her claim that the in-laws had been torturing her also seems to have had no effect. No wonder, the petitioner had to leave her matrimonial house to stay at with her parents house at Kot-Kapura. Having lost her life partner, the wife can be expected to look for a fresh start in her unfortunate life. She has now got married and is having a child, who is about two years old. Her in-laws would not still leave her and want her to be prosecuted with uncertain allegations that she had aborted a pregnancy. She has now sought this way out to seek end to her prosecution, obviously with an added aim to save her new married life.

While issuing notice of motion, this Court stayed further

proceedings against the petitioner on 16.8.2005. Reply on behalf of the respondents is filed. The respondent-in laws are adamant and want the petitioner prosecuted without any care for her and her newly acquired asylum if not happiness.

The counsel appearing for the respondent would refer to a pregnancy test of the petitioner conducted at Choudhary Pathological Laboratory, Narnaul on 26.4.2000 and to her subsequent medical check ups to highlight that she was pregnant from the loins of deceased Dinesh Kumar. He would also refer to the assurance that they gave to the petitioner that they had proposed her marriage with Manoj Kumar, their nephew and a share 1/3rd of the property to the child in the womb of the petitioner. For them, her will about her second life partner is immaterial. She is expected to accept this proposal without demur. Respondents, thus, complain of the conspiracy on the part of the petitioner to kill the fetus in the womb. They are deaf to the plea of the petitioner that she was not pregnant but would insist in pleading that offences alleged against the petitioner are made out. They have, thus, opposed the prayer of the petitioner for quashing of the complaint and the summoning order with all the vehemence at their command.

I have considered the rival pleas of the parties with special consideration and peculiar circumstances of the case. The facts in the case would have made hardest of hard to relent a bit not to see the case from purely legal angle. Even otherwise, I see no viable record or evidence indicating the pregnancy of the petitioner from the loins of Dinesh Kumar. The petitioner is now married and settled in her new life. She needs to breathe fresh air unmindful of

what had happened to her earlier and look after her child. The respondent can not justify their rigid approach by saying that they have lost an heir. They have to see that, if it is true, the petitioner also would have lost something which was her part. This apart, the respondent has not been able to sufficiently establish the allegation for continuing with prosecution. The plea of the petitioner that the respondent is more concerned to oust her from inheriting the benefit, may sound real and probable. This may appear to be so as the respondent did initiate litigation for claiming service benefit due to the death of Dinesh Kumar. It cannot be totally discarded that the aim of the respondent may also be to see that the petitioner is dis-entitled or dis-inherited from claiming the benefit becoming due on account of death of her husband. No viable evidence is available on the record to indicate pregnancy, specially so when the petitioner has denied this fact. Evidence of some tests would not be enough to permit the proceedings to continue when apparently nothing is placed before the Court to show that any act was done preventing the child from being born alive or if done it was not in good faith to attract the offence under Section 315. There are no allegations of secretly burying or otherwise disposing of the dead body of child to invite penal consequences under Section 318 IPC. There is no likelihood of any such evidence being available, which would be essential to establish the charges as alleged. Proof of pregnancy alone is not enough to show that it was aborted to bring home offence, which has to be separately established.

Having considered totality of the circumstances, I am inclined to accept this revision. The present petition is accordingly

allowed. The complaint and the summoning order are quashed, relieving the petitioner of any consequences of the proceedings.

May 16, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**